

ITEM 16
TEST CLAIM
FINAL STAFF ANALYSIS

Elections Code Sections 3100, 3101, 3103, 3104, 3106, 3108, 3110,
3200, 3201, 3202, 3203, 3204, 3205, and 3206

Statutes 1994, Chapter 920
Statutes 1996, Chapter 724
Statutes 2001, Chapter 918
Statutes 2001, Chapter 922
Statutes 2002, Chapter 664
Statutes 2003, Chapter 347

Permanent Absent Voters II (As Amended) (03-TC-11)

County of Sacramento, Claimant

EXECUTIVE SUMMARY

Claimant, County of Sacramento, filed this test claim on September 26, 2003, and an amendment on January 27, 2004, "to reflect changes in the election law pertaining to Permanent Absent Voters since the first test claim was filed." The Commission previously determined Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in an earlier test claim *Permanent Absent Voters* (CSM-4358) decision, effective September 21, 1989. Prior to the enactment of the current test claim legislation, Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

Conclusion

Staff concludes that Elections Code sections 3201 and 3203, subdivision (b)(2) mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2), as amended by Stats. 2001, ch. 922.)

Staff concludes that Elections Code sections 3200, 3202, 3203, subdivisions (a) and (b)(1) and (b)(3), 3204, 3205, subdivision (a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists. Any references to former Elections Code sections 1450, 1452, 1454, 1455 and 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by their new numbers when the parameters and guidelines are amended.

In addition, staff concludes that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.¹

Recommendation

Staff recommends that the Commission adopt this analysis and partially approve the test claim for the activities listed in the Conclusion.

¹ Allegations regarding Elections Code sections 3104, 3106, 3108, and 3110 were not pled with specificity and thus were not addressed in this analysis.

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

- 09/26/03 Claimant files original test claim (03-TC-11) with the Commission
- 10/03/03 Commission staff issues completeness review letter
- 11/06/03 Department of Finance (DOF) requests an extension of time to file comments
- 11/07/03 Commission staff grants extension request
- 12/04/03 DOF files comments on the test claim
- 01/27/04 Claimant files rebuttal to state agency comments
- 01/27/04 Claimant files test claim amendment with the Commission
- 03/24/04 Claimant submits letter agreeing that test claim amendment is a substitute for the original test claim filing, except to maintain the original filing date
- 04/23/04 Commission staff issues completeness review letter on test claim amendment
- 05/27/04 DOF files comments on the amendment to the test claim
- 04/17/06 Claimant correspondence received regarding test claim amendment and exhibits
- 05/01/06 Commission staff issues the draft staff analysis

Background

Prior to the enactment of the test claim legislation, Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status. The Commission previously determined these sections to constitute a reimbursable state-mandated program in the test claim *Permanent Absent Voters* (CSM-4358) [hereafter *Permanent Absent Voters I*].

In the *Permanent Absent Voters I* Statement of Decision, effective September 21, 1989, the Commission concluded

that sections 1450 through 1456, as added by Chapter 1422/82, require counties to implement a new program because the county clerk must now: (1) establish and maintain a list of permanent absent voters who provide evidence of physical disability, (2) mail absent voter ballots to such voters for each election in which they are eligible to vote, and (3) delete from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide direct primary or general election.

Furthermore, the Commission directs staff and the involved parties to consider any offsetting savings during the development of the parameters and guidelines.

Thus, the Commission determined that prior to the operation of Statutes 1982, chapter 1422, there was no permanent absent voters program. Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and

reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, making both technical changes in wording, as well as substantive changes. The substantive changes made in 2001 allow *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

Claimant's Position

Claimant, County of Sacramento, filed this test claim on September 26, 2003, and an amendment on January 27, 2004,² "to reflect changes in the election law pertaining to Permanent Absent Voters since the first test claim was filed." Claimant contends that Elections Code sections 3100, 3101,³ 3103, 3104, 3106, 3108, 3110, and 3200 through 3206 constitutes a reimbursable state-mandated program. Following are some of the reimbursable activities asserted by the claimant:

- Providing permanent absent ballot applications.
- Receiving and processing permanent absent ballot applications.
- Sending a copy of the list of all voters who qualify as permanent absent voters to city or district elections officials.
- Preparing, printing, and sending sample ballots.
- Providing the permanent absent voter roll to city and district election officials.
- Making the roll available for public inspection.
- Maintaining the roll, including purging voters from the permanent absent voter list, when the voter fails to vote in any statewide direct primary or general election, and reinstating a voter's name on the roll upon the voter's request.
- Paying for increased postage of mailing out ballots to a larger permanent absent voter roll.

Claimant also requests that the parameters and guidelines for *Permanent Absent Voters I* be amended to include the findings for the present test claim.

In a response to Department of Finance's December 2003 comments on the test claim filing, claimant further alleges activities for: dealing with additional provisional voters "who have permanent absent voter status, ... but appear to vote in person;" answering additional phone calls at election time from voters who "forget they are on the permanent absentee voter roll;" and comparing the signature on absentee ballots with those on file, "to make sure that it was the voter who completed and signed the absentee ballot."

No comments were received on the draft staff analysis from the claimant or interested parties.

² Potential reimbursement period for this claim begins no earlier than July 1, 2002. (Gov. Code, § 17557, subd. (c).)

³ Page 5 of the Amended Test Claim Filing actually names section "3191," but as the rest of the numbers are in sequence, this is presumed to be a typographical error.

Department of Finance's Position

DOF filed comments on December 4, 2003, and May 27, 2004, addressing the allegations stated in the test claim and subsequent amendment. DOF ultimately concluded that the test claim statutes "expanded the scope of the permanent absent voter program to include all voters," which "could represent a higher level of service..."

No comments were received on the draft staff analysis from DOF or any other state agencies.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.⁸

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

⁴ Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

legislation.¹⁰ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹¹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹³ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁴

Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁵ The court has held that only one of these findings is necessary.¹⁶

Staff finds that requiring a permanent absent voter process imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public who want to become permanent absent voters. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, staff finds that the test claim legislation constitutes a “program” and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution if the

¹⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁴ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁵ *County of Los Angeles*, *supra*, 43 Cal.3d at page 56.

¹⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

legislation also mandates a new program or higher level of service, and costs mandated by the state.

Issue 2: Does the test claim legislation mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

In order to be subject to article XIII B, section 6, of the California Constitution, test claim legislation must mandate a state-mandated activity on a local agency or school district.¹⁷ Courts have adopted a “strict construction” interpretation of article XIII B, section 6.¹⁸ Consistent with this narrow interpretation, the term “mandate” has been construed according to its commonly understood meaning as an “order” or “command.”¹⁹ Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and “where the language is clear there is no room for interpretation.”²⁰ Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court to write such requirements into the statute.²¹ The California Supreme Court has noted that “[w]e cannot... read a mandate into language which is plainly discretionary.”²²

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.²³ The courts have defined a “higher level of service” in conjunction with the phrase “new program” to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, “it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs.”²⁴ A statute or executive order mandates a reimbursable “higher level of service” when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service provided in the existing program.²⁵

¹⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

¹⁸ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816-17.

¹⁹ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174.

²⁰ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

²¹ *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.App.2d 753, 757.

²² *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816.

²³ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

²⁴ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

²⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

Reenactment and Renumbering by Statutes 1994, Chapter 920:

Elections Code Sections 3200, 3202 and 3204:

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3200 states:

A voter who qualifies under this chapter shall be entitled to become a permanent absent voter.

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3202 states:

In lieu of executing the application set forth in Section 3201, any voter may execute a request for permanent absent voter status by making a written request to the county elections official requesting the status. If a written request is received by the county elections official and it contains the information set forth in Section 3201, the elections official shall process that application in the manner provided in Section 3203.

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3204 states:

The county elections official shall send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county. The list shall be sent by the sixth day before an election.

These sections are identical to prior law, which was already determined in *Permanent Absent Voters I*. An uncodified portion of Statutes 1994, chapter 920 states the following legislative intent:

SEC. 3. It is the intent of the Legislature in enacting this act to reorganize and clarify the Elections Code and thereby facilitate its administration. The Legislature intends that the changes made to the Elections Code, as reorganized by this act, have only technical and nonsubstantive effect. Hence, no change made by this act shall be construed to create any new right, duty, or other obligation that did not exist on the effective date of this act, or result in the limitation or termination of any right, duty, or other obligation that existed on the effective date of this act.

SEC. 4. The Legislature finds that the reorganization of the Elections Code pursuant to this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies responsible for the conduct of elections or charged with any duties or responsibilities in connection therewith.

Staff makes a general finding, in accordance with the legislative intent stated in the uncodified portion of Statutes 1994, chapter 920, that a renumbered or restated statute is not a newly enacted provision. In addition, Elections Code section 2 provides:

The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

The rationale behind Elections Code section 2 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.²⁶

Staff finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, staff finds that Elections Code sections 3200, 3202, and 3204, as reenacted and renumbered by Statutes 1994, chapter 920, do not mandate a new program or higher level of service. However, any references to former Elections Code sections 1450, 1452, and 1454 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Further Changes to *Permanent Absent Voters I* Test Claim Legislation:

Elections Code Section 3201:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 2001, chapter 918,²⁷ Statutes 2001, chapter 922, Statutes 2002, chapter 664,²⁸ and Statutes 2003, chapter 347,²⁹ Elections Code section 3201 provides:

Any voter may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 3001, 3100, or 3304. The voter shall complete an application, which shall be available from the county elections official, and which shall contain all of the following:

- (a) The applicant's name at length.
- (b) The applicant's residence address.
- (c) The address where ballot is to be mailed, if different from the place of residence.
- (d) The signature of the applicant.

Prior to Statutes 1982, chapter 1422, no permanent absent voter program existed. Statutes 1982, chapter 1422, approved as a reimbursable state-mandated program in *Permanent Absent Voters I* provided a list of specific conditions or disabilities required to qualify for permanent absent voter status. The 2001 amendment substantively changed the law to expand eligibility to all voters. This amendment goes beyond creating a higher level of service in an existing program, but rather creates an entirely different program. Instead of a permanent absent voter program created for a select group of voters who provide proof of certain disabling conditions, the Legislature now allows any registered voter to file with county elections officials for permanent absent voter

²⁶ *In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops. Cal. Atty. Gen. 49 (1950).

²⁷ This amendment was never operative upon the subsequent adoption of Statutes 2001, chapter 922. (Affected by two or more acts at the same session of the legislature, see Gov. Code, § 9605.)

²⁸ Code maintenance bill, non-substantive changes.

²⁹ Added references to Elections Code sections 3100 and 3304.

status. Operative January 1, 2002 a new permanent absent voter program was substituted for the previous reimbursable state mandate.

Therefore, staff finds that Elections Code section 3201, mandates a new program or higher level of service on counties for the following activity:

- County elections officials shall make an application for permanent absent voter status available to any voter.

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

Elections Code Section 3203:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 1996, chapter 724,³⁰ Statutes 2001, chapter 922, and Statutes 2003, chapter 347, Elections Code section 3203 provides:

(a) Upon receipt of an application for permanent absent voter status, the county elections official shall process the application in the same manner as an application for a regular absent voter's ballot, or, in the case of an application made pursuant to Section 3100 or 3304, in the same manner as an application for a special absent voter ballot or overseas ballot.

(b) In addition to processing applications in accordance with Chapter 1 (commencing with Section 3000), if it is determined that the applicant is a registered voter, the county elections official shall do the following:

(1) Place the voter's name upon a list of those to whom an absentee ballot is sent each time there is an election within their precinct.

(2) Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206.

(3) Maintain a copy of the absentee ballot voter list on file open to the public inspection for election and governmental purposes.

Statutes 2001, chapter 922 added subdivision (b)(2) requiring the inclusion of an explanation of absentee voting procedures and of Elections Code section 3206 in all absentee ballot mailings. Statutes 2003, chapter 347 added the clause in subdivision (a) referencing Elections Code sections 3100 and 3304.

Prior to the amendment by Statutes 2001, chapter 922, county elections officials did not have a statutory duty to "Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206." Elections Code section 3206 is the provision that requires counties to purge names from the permanent absent voter rolls when a voter fails to return an absentee ballot for specified elections. Providing this information to voters mandates a new program or higher level of service upon counties for the following activity:

³⁰ Made non-substantive changes.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206.

The remainder of Elections Code section 3206 is substantively identical to prior law, which was already decided by the Commission in *Permanent Absent Voters I*, and remains a reimbursable state-mandated program.

Elections Code Section 3205:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 2001, chapter 925, Elections Code section 3205 provides:

- (a) Absent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots.
- (b) Prior to each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice shall also contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads as follows: "I am not presently affiliated with any political party. However, for this primary election only, I request an absentee ballot for the ____ Party." The name of the political party shall be personally affixed by the voter.

Subdivision (a) is substantively identical to prior law, which was already determined in *Permanent Absent Voters I*. Staff finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, staff finds that Elections Code section 3205, subdivision (a), as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code section 1455 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Subdivision (b) was added by Statutes 2001, chapter 925, however this statute was not pled as part of this test claim. Claimant instead states on page 3, footnote 3, of the test claim filing: "Please note that a test claim has been filed regarding this provision, which is commonly referred to as Modified Primary. That test claim, and all filings pertaining thereto, is incorporated herein by reference as though set forth in its entirety." Statutes 2001, chapter 925 was not included in the *Permanent Absent Voters II* test claim filing, and another test claim cannot be incorporated by reference due to requirements that all test claims be pled with specificity (former Cal. Code Regs., tit. 2, section 1183, subd. (d)(1), now codified as Gov. Code, § 17553.) Therefore the Commission cannot reach the merits on Elections Code section 3205, subdivision (b) as part of the present test claim decision.

Elections Code Section 3206:

Elections Code section 3206 was reenacted and renumbered by Statutes 1994, chapter 920, as discussed above. The *Permanent Absent Voters I* parameters and guidelines already includes an activity for deleting from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide primary or general election. The section was later amended to remove the reference to “primary,” and then again to require that a person be removed only after failing to vote in two consecutive general elections. However, those statutes have not been pled by the claimant, therefore the Commission does not have jurisdiction to make any findings on any this section.³¹ However, the basic activity of deleting permanent absent voters from the list when they do not vote in an election remains a reimbursable activity.

Thus, staff finds that Elections Code section 3206, as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code sections 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new number when the parameters and guidelines are amended.

Special Absentee Voters: New Program Alleged Mandated by Statutes 2003, Chapter 347:

In the test claim amendment filed on January 27, 2004, claimant contends that Election Code sections 3100, 3101,³² and 3103, as amended by Statutes 2003, chapter 347,³³ constitute a reimbursable state-mandated program. These code sections are not directly related to the *Permanent Absent Voters I* test claim. Claimant’s allegations regarding this statute follow:

Additionally, with the passage of AB 188, Chapter 347, Statutes of 2003, there is a new absent voter, the “special absentee voter” under Section 3100. Pursuant to section 3103(e), [sic, reference is to subd. (f)] said person may register to vote by fax, and elections materials may be sent via e-mail, fax or other electronic

³¹ The claimant pled Statutes 2003, chapter 347, but the section was amended by the later-enacted Statutes 2003, chapter 819 (see Gov. Code, § 9605), and then again by Statutes 2005, chapter 113.

³² Page 5 of the Amended Test Claim Filing actually lists section “3191,” but as the rest of the numbers are in sequence, this is presumed to be a typographical error.

³³ Although on page 5 of the Amended Test Claim Filing, claimant states: “The mandated activities are contained in Elections Code, Sections ... 3104, 3106, 3108, 3110,...” claimant does not make any allegations regarding these sections in the narrative. The Commission’s process requires that all test claims be pled with specificity (former Cal. Code Regs., tit. 2, section 1183, subd. (d)(1), now codified as Gov. Code, § 17553. Gov. Code, § 17553, subd. (b)(2)(C) requires: “Declarations *describing new activities performed to implement specified provisions of the new statute* or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.”) Therefore, staff will not address Elections Code sections 3104, 3106, 3108, and 3110 in this analysis.

transmission. However, if the person requests permanent absentee status, the application is to be transmitted pursuant to Section 3101.

For background, a "special absentee voter" is defined in Elections Code section 300, as "an elector who is any of the following: (1) A member of the armed forces of the United States or any auxiliary branch thereof. (2) A citizen of the United States temporarily living outside of the territorial limits of the United States or the District of Columbia. (3) Serving on a merchant vessel documented under the laws of the United States. (4) A spouse or dependent of a member of the armed forces or any auxiliary branch thereof."

Elections Code Section 3100:

Prior to amendment by Statutes 2003, chapter 347, Elections Code section 3100 provided:

When a special absentee voter applies for an absent voter's ballot and the elections official determines that he or she is not registered to vote, the elections official shall send the affidavit of registration card with the ballot. The affidavit of registration must be completed by the voter and returned with the voted ballot or the ballot shall not be counted.

If the application has been made upon a federal form for absentee ballots the form shall be deemed an affidavit of registration and the applicant shall be considered registered for that election only. If the special absentee voter requests an absentee ballot for the ensuing primary election, the elections official shall also consider the request valid for the ensuing general election.

If the applicant is not a resident of the county to which he or she has applied, the elections official receiving the application shall forward it immediately to the proper county.

Elections Code section 3100, as amended, removes the second paragraph, but leaves the third paragraph unchanged. The first paragraph now reads:

When a voter who qualifies as a special absentee voter pursuant to subdivision (b) of Section 300 applies for an absent voter's ballot, the application shall be deemed to be an affidavit of registration and an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200). The application must be completed by the voter and must contain the voter's name, residence address for voting purposes, the address to which the ballot is to be sent, the voter's political party for a primary election, and the voter's signature.

Thus, there is no *new* type of absent voter established by Statutes 2003, chapter 347 – the law has long established a category of "special absentee voter." The amended section allows an application for an absentee ballot to be considered both a permanent absentee ballot request and a registration to vote, eliminating the requirement to send a registration card with the absent voter's ballot if the requestor was not properly registered. In addition, since the request for an absent voter's ballot under this section is "deemed to be ... an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200)" any activities associated with new permanent absent voters are reimbursable under Elections Code section 3200 through 3206, as discussed above. Thus, staff finds that amendment to Elections Code section 3100 by Statutes 2003, chapter 347, does not in and of itself mandate a new program or higher level of service.

Elections Code Section 3101:

Amendment by Statutes 2003, chapter 347 to Elections Code section 3101, is indicated by underline and strikethrough:

Upon timely receipt of the ~~affidavit of registration and the voted~~ application for an absentee ballot, the elections official shall examine the ~~affidavit~~ application to ascertain that it is properly executed in accordance with this code ~~and that the applicant is a qualified elector of the county.~~ If the elections official is satisfied of ~~these~~ this facts, the applicant shall be deemed a duly registered voter as of the date appearing on the ~~affidavit~~ application to the same extent and with the same effect as though he or she had registered in proper time prior to the election.

These amendments reflect the fact that section 3100, as discussed above, no longer requires elections officials to send a registration card with the special absent voter's ballot if the requestor was not properly registered, but rather may consider the absent ballot request alone to be an executed voter registration. Staff finds that the changes to Elections Code section 3101 by Statutes 2003, chapter 347 does not mandate a new program or higher level of service; in fact, it may reduce the burden on elections officials.

Elections Code Section 3103, Subdivision (f):

Amendment by Statutes 2003, chapter 347 to Elections Code section 3103, subdivision (f), is indicated by underline and strikethrough:

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official ~~shall~~ may send to the qualified special absentee voter either by mail, ~~or~~ facsimile, or electronic transmission the special absentee ballot or, if available, an absent ~~s~~ voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

The primary amendment by Statutes 2003, chapter 347 changes the word "shall" to "may" regarding available formats for transmitting the absent ballot. Staff finds that such changes to Elections Code section 3103 by Statutes 2003, chapter 347 does not mandate a new program or higher level of service; but again may reduce the burden on elections officials.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$1000 or more for the test claim allegations. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the activities listed in the conclusion below, staff agrees and finds accordingly that they impose costs mandated by the state upon counties within the meaning of Government Code section 17514.

CONCLUSION

Staff concludes that Elections Code sections 3201 and 3203, subdivision (b)(2) mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201.)³⁴

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2).)³⁵

Staff concludes that Elections Code sections 3200, 3202, 3203, subdivisions (a) and (b)(1) and (b)(3), 3204, 3205, subdivision (a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists. Any references to former Elections Code sections 1450, 1452, 1454, 1455 and 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by their new numbers when the parameters and guidelines are amended as described above.

In addition, staff concludes that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.³⁶

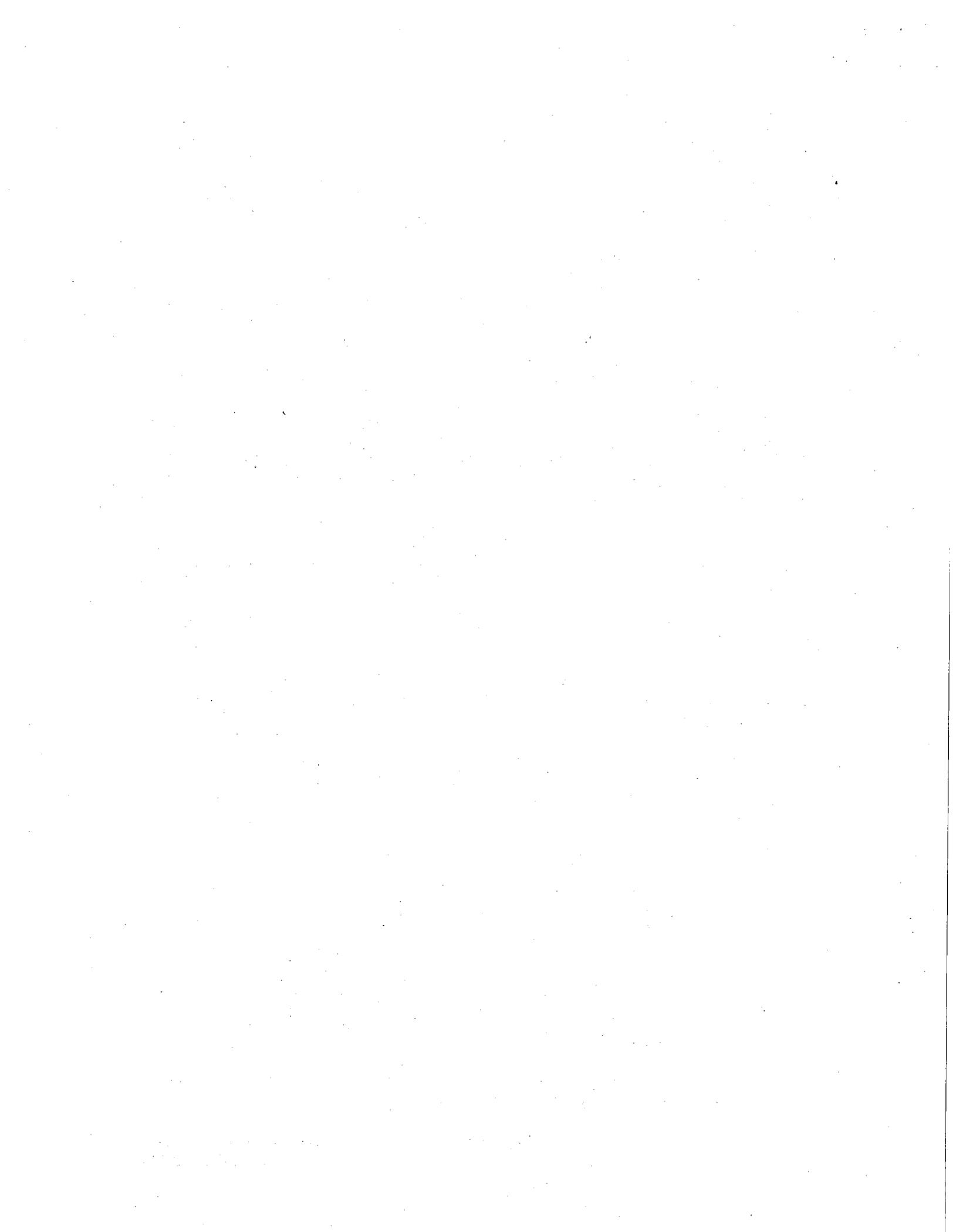
Recommendation

Staff recommends that the Commission adopt this analysis and partially approve the test claim for the activities listed above.

³⁴ As amended by Statutes 2001, chapter 922, Statutes 2002, chapter 664, and Statutes 2003, chapter 347. The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

³⁵ As amended by Statutes 2001, chapter 922. The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

³⁶ Allegations regarding Elections Code sections 3104, 3106, 3108, and 3110 were not pled with specificity and thus were not addressed in this analysis.



ITEM 17
TEST CLAIM
PROPOSED STATEMENT OF DECISION

Elections Code Sections 3100, 3101, 3103, 3104, 3106, 3108, 3110,
3200, 3201, 3202, 3203, 3204, 3205, and 3206

Statutes 1994, Chapter 920
Statutes 1996, Chapter 724
Statutes 2001, Chapter 918
Statutes 2001, Chapter 922
Statutes 2002, Chapter 664
Statutes 2003, Chapter 347

Permanent Absent Voters II (As Amended) (03-TC-11)

County of Sacramento, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Permanent Absent Voters II* test claim.¹

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on item 16 modifies the staff analysis, staff recommends that the motion to adopt the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a Proposed Statement of Decision be continued to the September 2006 Commission hearing.

¹ California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Elections Code Sections 3100, 3101, 3103, 3104, 3106, 3108, 3110, 3200, 3201, 3202, 3203, 3204, 3205, and 3206;

Statutes 1994, Chapter 920; Statutes 1996, Chapter 724; Statutes 2001, Chapter 918; Statutes 2001, Chapter 922; Statutes 2002, Chapter 664; Statutes 2003, Chapter 347;

Filed on September 26, 2003, and amended on January 27, 2004, by County of Sacramento, Claimant.

Case No.: 03-TC-11

Permanent Absent Voters II

PROPOSED STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; CALIFORNIA
CODE OF REGULATIONS, TITLE 2,
DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Proposed for Adoption on July 28, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 28, 2006. [Witness list will be included in the final Statement of Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis to partially approve this test claim at the hearing by a vote of [vote count will be included in the final Statement of Decision].

Summary of Findings

Claimant, County of Sacramento, filed this test claim on September 26, 2003, and an amendment on January 27, 2004, "to reflect changes in the election law pertaining to Permanent Absent Voters since the first test claim was filed." The Commission previously determined Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in an earlier test claim *Permanent Absent Voters* (CSM-4358) decision, effective September 21, 1989. Prior to the enactment of the current test claim legislation, Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing all

registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

The Commission concludes that Elections Code sections 3201 and 3203, subdivision (b)(2) mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2), as amended by Stats. 2001, ch. 922.)

The Commission concludes that Elections Code sections 3200, 3202, 3203, subdivisions (a) and (b)(1) and (b)(3), 3204, 3205, subdivision (a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists. Any references to former Elections Code sections 1450, 1452, 1454, 1455 and 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by their new numbers when the parameters and guidelines are amended.

In addition, the Commission concludes that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.

BACKGROUND

Prior to the enactment of the test claim legislation, Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status. The Commission previously determined these sections to constitute a reimbursable state-mandated program in the test claim *Permanent Absent Voters* (CSM-4358) [hereafter *Permanent Absent Voters I*].

In the *Permanent Absent Voters I* Statement of Decision, effective September 21, 1989, the Commission concluded

that sections 1450 through 1456, as added by Chapter 1422/82, require counties to implement a new program because the county clerk must now: (1) establish and maintain a list of permanent absent voters who provide evidence of physical disability, (2) mail absent voter ballots to such voters for each election in which they are eligible to vote, and (3) delete from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide direct primary or general election.

Furthermore, the Commission directs staff and the involved parties to consider any offsetting savings during the development of the parameters and guidelines.

Thus, the Commission determined that prior to the operation of Statutes 1982, chapter 1422, there was no permanent absent voters program. Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, making both technical changes in wording, as well as substantive changes. The substantive changes made in 2001 allow *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

Claimant's Position

Claimant, County of Sacramento, filed this test claim on September 26, 2003, and an amendment on January 27, 2004,² "to reflect changes in the election law pertaining to Permanent Absent Voters since the first test claim was filed." Claimant contends that Elections Code sections 3100, 3101,³ 3103, 3104, 3106, 3108, 3110, and 3200 through 3206 constitutes a reimbursable state-mandated program. Following are some of the reimbursable activities asserted by the claimant:

- Providing permanent absent ballot applications.
- Receiving and processing permanent absent ballot applications.
- Sending a copy of the list of all voters who qualify as permanent absent voters to city or district elections officials.
- Preparing, printing, and sending sample ballots.
- Providing the permanent absent voter roll to city and district election officials.
- Making the roll available for public inspection.
- Maintaining the roll, including purging voters from the permanent absent voter list, when the voter fails to vote in any statewide direct primary or general election, and reinstating a voter's name on the roll upon the voter's request.
- Paying for increased postage of mailing out ballots to a larger permanent absent voter roll.

Claimant also requests that the parameters and guidelines for *Permanent Absent Voters I* be amended to include the findings for the present test claim.

In a response to Department of Finance's December 2003 comments on the test claim filing, claimant further alleges activities for: dealing with additional provisional voters "who have permanent absent voter status, ... but appear to vote in person;" answering additional phone calls at election time from voters who "forget they are on the permanent absentee voter roll;" and

² Potential reimbursement period for this claim begins no earlier than July 1, 2002. (Gov. Code, § 17557, subd. (c).)

³ Page 5 of the Amended Test Claim Filing actually names section "3191," but as the rest of the numbers are in sequence, this is presumed to be a typographical error.

comparing the signature on absentee ballots with those on file, “to make sure that it was the voter who completed and signed the absentee ballot.”

No comments were received on the draft staff analysis from the claimant or interested parties.

Department of Finance’s Position

DOF filed comments on December 4, 2003, and May 27, 2004, addressing the allegations stated in the test claim and subsequent amendment. DOF ultimately concluded that the test claim statutes “expanded the scope of the permanent absent voter program to include all voters,” which “could represent a higher level of service...”

No comments were received on the draft staff analysis from DOF or any other state agencies.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.⁸

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁹ To determine if the

⁴ Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878; (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*,

program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁰ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹¹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹³ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁴

Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁵ The court has held that only one of these findings is necessary.¹⁶

The Commission finds that requiring a permanent absent voter process imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public who want to become permanent absent voters. The test claim legislation also requires local elections officials to engage in

44 Cal.3d 830, 835.)

¹⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁴ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁵ *County of Los Angeles*, *supra*, 43 Cal.3d at page 56.

¹⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, the Commission finds that the test claim legislation constitutes a “program” and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution if the legislation also mandates a new program or higher level of service, and costs mandated by the state.

Issue 2: Does the test claim legislation mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

In order to be subject to article XIII B, section 6, of the California Constitution, test claim legislation must mandate a state-mandated activity on a local agency or school district.¹⁷ Courts have adopted a “strict construction” interpretation of article XIII B, section 6.¹⁸ Consistent with this narrow interpretation, the term “mandate” has been construed according to its commonly understood meaning as an “order” or “command.”¹⁹ Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and “where the language is clear there is no room for interpretation.”²⁰ Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court to write such requirements into the statute.²¹ The California Supreme Court has noted that “[w]e cannot... read a mandate into language which is plainly discretionary.”²²

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.²³ The courts have defined a “higher level of service” in conjunction with the phrase “new program” to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, “it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs.”²⁴ A statute or executive order mandates a reimbursable “higher level of service” when the statute or executive order, as compared to the legal requirements in effect

¹⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

¹⁸ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816-17.

¹⁹ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174.

²⁰ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

²¹ *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.App.2d 753, 757.

²² *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816.

²³ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

²⁴ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

immediately before the enactment of the test claim legislation, increases the actual level of governmental service provided in the existing program.²⁵

Reenactment and Renumbering by Statutes 1994, Chapter 920:

Elections Code Sections 3200, 3202 and 3204:

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3200 states:

A voter who qualifies under this chapter shall be entitled to become a permanent absent voter.

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3202 states:

In lieu of executing the application set forth in Section 3201, any voter may execute a request for permanent absent voter status by making a written request to the county elections official requesting the status. If a written request is received by the county elections official and it contains the information set forth in Section 3201, the elections official shall process that application in the manner provided in Section 3203.

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3204 states:

The county elections official shall send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county. The list shall be sent by the sixth day before an election.

These sections are identical to prior law, which was already determined in *Permanent Absent Voters I*. An uncodified portion of Statutes 1994, chapter 920 states the following legislative intent:

SEC. 3. It is the intent of the Legislature in enacting this act to reorganize and clarify the Elections Code and thereby facilitate its administration. The Legislature intends that the changes made to the Elections Code, as reorganized by this act, have only technical and nonsubstantive effect. Hence, no change made by this act shall be construed to create any new right, duty, or other obligation that did not exist on the effective date of this act, or result in the limitation or termination of any right, duty, or other obligation that existed on the effective date of this act.

SEC. 4. The Legislature finds that the reorganization of the Elections Code pursuant to this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies responsible for the conduct of elections or charged with any duties or responsibilities in connection therewith.

The Commission makes a general finding, in accordance with the legislative intent stated in the uncodified portion of Statutes 1994, chapter 920, that a renumbered or restated statute is not a newly enacted provision. In addition, Elections Code section 2 provides:

²⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

The rationale behind Elections Code section 2 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.²⁶

The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, the Commission finds that Elections Code sections 3200, 3202, and 3204, as reenacted and renumbered by Statutes 1994, chapter 920, do not mandate a new program or higher level of service. However, any references to former Elections Code sections 1450, 1452, and 1454 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Further Changes to *Permanent Absent Voters I* Test Claim Legislation:

Elections Code Section 3201:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 2001, chapter 918,²⁷ Statutes 2001, chapter 922, Statutes 2002, chapter 664,²⁸ and Statutes 2003, chapter 347,²⁹ Elections Code section 3201 provides:

Any voter may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 3001, 3100, or 3304. The voter shall complete an application, which shall be available from the county elections official, and which shall contain all of the following:

- (a) The applicant's name at length.
- (b) The applicant's residence address.
- (c) The address where ballot is to be mailed, if different from the place of residence.
- (d) The signature of the applicant.

Prior to Statutes 1982, chapter 1422, no permanent absent voter program existed. Statutes 1982, chapter 1422, approved as a reimbursable state-mandated program in *Permanent Absent Voters I*

²⁶ *In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops. Cal. Atty. Gen. 49 (1950).

²⁷ This amendment was never operative upon the subsequent adoption of Statutes 2001, chapter 922. (Affected by two or more acts at the same session of the legislature, see Gov. Code, § 9605.)

²⁸ Code maintenance bill, non-substantive changes.

²⁹ Added references to Elections Code sections 3100 and 3304.

provided a list of specific conditions or disabilities required to qualify for permanent absent voter status. The 2001 amendment substantively changed the law to expand eligibility to all voters. This amendment goes beyond creating a higher level of service in an existing program, but rather creates an entirely different program. Instead of a permanent absent voter program created for a select group of voters who provide proof of certain disabling conditions, the Legislature now allows any registered voter to file with county elections officials for permanent absent voter status. Operative January 1, 2002 a new permanent absent voter program was substituted for the previous reimbursable state mandate.

Therefore, the Commission finds that Elections Code section 3201, mandates a new program or higher level of service on counties for the following activity:

- County elections officials shall make an application for permanent absent voter status available to any voter.

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

Elections Code Section 3203:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 1996, chapter 724,³⁰ Statutes 2001, chapter 922, and Statutes 2003, chapter 347, Elections Code section 3203 provides:

(a) Upon receipt of an application for permanent absent voter status, the county elections official shall process the application in the same manner as an application for a regular absent voter's ballot, or, in the case of an application made pursuant to Section 3100 or 3304, in the same manner as an application for a special absent voter ballot or overseas ballot.

(b) In addition to processing applications in accordance with Chapter 1 (commencing with Section 3000), if it is determined that the applicant is a registered voter, the county elections official shall do the following:

(1) Place the voter's name upon a list of those to whom an absentee ballot is sent each time there is an election within their precinct.

(2) Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206.

(3) Maintain a copy of the absentee ballot voter list on file open to the public inspection for election and governmental purposes.

Statutes 2001, chapter 922 added subdivision (b)(2) requiring the inclusion of an explanation of absentee voting procedures and of Elections Code section 3206 in all absentee ballot mailings. Statutes 2003, chapter 347 added the clause in subdivision (a) referencing Elections Code sections 3100 and 3304.

Prior to the amendment by Statutes 2001, chapter 922, county elections officials did not have a statutory duty to "Include in all absentee ballot mailings to the voter an explanation of the

³⁰ Made non-substantive changes.

absentee voting procedure and an explanation of Section 3206.” Elections Code section 3206 is the provision that requires counties to purge names from the permanent absent voter rolls when a voter fails to return an absentee ballot for specified elections. Providing this information to voters mandates a new program or higher level of service upon counties for the following activity:

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206.

The remainder of Elections Code section 3206 is substantively identical to prior law, which was already decided by the Commission in *Permanent Absent Voters I*, and remains a reimbursable state-mandated program.

Elections Code Section 3205:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 2001, chapter 925, Elections Code section 3205 provides:

- (a) Absent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots.
- (b) Prior to each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice shall also contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads as follows: “I am not presently affiliated with any political party. However, for this primary election only, I request an absentee ballot for the ___ Party.” The name of the political party shall be personally affixed by the voter.

Subdivision (a) is substantively identical to prior law, which was already determined in *Permanent Absent Voters I*. The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, the Commission finds that Elections Code section 3205, subdivision (a), as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code section 1455 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Subdivision (b) was added by Statutes 2001, chapter 925, however this statute was not pled as part of this test claim. Claimant instead states on page 3, footnote 3, of the test claim filing: “Please note that a test claim has been filed regarding this provision, which is commonly referred to as Modified Primary. That test claim, and all filings pertaining thereto, is incorporated herein by reference as though set forth in its entirety.” Statutes 2001, chapter 925 was not included in the *Permanent Absent Voters II* test claim filing, and another test claim cannot be incorporated

by reference due to requirements that all test claims be pled with specificity (former Cal. Code Regs., tit. 2, section 1183, subd. (d)(1), now codified as Gov. Code, § 17553.) Therefore the Commission cannot reach the merits on Elections Code section 3205, subdivision (b) as part of the present test claim decision.

Elections Code Section 3206:

Elections Code section 3206 was reenacted and renumbered by Statutes 1994, chapter 920, as discussed above. The *Permanent Absent Voters I* parameters and guidelines already includes an activity for deleting from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide primary or general election. The section was later amended to remove the reference to “primary,” and then again to require that a person be removed only after failing to vote in two consecutive general elections. However, those statutes have not been pled by the claimant, therefore the Commission does not have jurisdiction to make any findings on any this section.³¹ However, the basic activity of deleting permanent absent voters from the list when they do not vote in an election remains a reimbursable activity.

Thus, the Commission finds that Elections Code section 3206, as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code sections 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new number when the parameters and guidelines are amended.

Special Absentee Voters: New Program Alleged Mandated by Statutes 2003, Chapter 347:

In the test claim amendment filed on January 27, 2004, claimant contends that Election Code sections 3100, 3101,³² and 3103, as amended by Statutes 2003, chapter 347,³³ constitute a reimbursable state-mandated program. These code sections are not directly related to the *Permanent Absent Voters I* test claim. Claimant’s allegations regarding this statute follow:

Additionally, with the passage of AB 188, Chapter 347, Statutes of 2003, there is a new absent voter, the “special absentee voter” under Section 3100. Pursuant to

³¹ The claimant pled Statutes 2003, chapter 347, but the section was amended by the later-enacted Statutes 2003, chapter 819 (see Gov. Code, § 9605), and then again by Statutes 2005, chapter 113.

³² Page 5 of the Amended Test Claim Filing actually lists section “3191,” but as the rest of the numbers are in sequence, this is presumed to be a typographical error.

³³ Although on page 5 of the Amended Test Claim Filing, claimant states: “The mandated activities are contained in Elections Code, Sections ... 3104, 3106, 3108, 3110,…” claimant does not make any allegations regarding these sections in the narrative. The Commission’s process requires that all test claims be pled with specificity (former Cal. Code Regs., tit. 2, section 1183, subd. (d)(1), now codified as Gov. Code, § 17553. Gov. Code, § 17553, subd. (b)(2)(C) requires: “Declarations *describing new activities performed to implement specified provisions of the new statute* or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.”) Therefore, the Commission will not address Elections Code sections 3104, 3106, 3108, and 3110 in this analysis.

section 3103(e), [sic, reference is to subd. (f)] said person may register to vote by fax, and elections materials may be sent via e-mail, fax or other electronic transmission. However, if the person requests permanent absentee status, the application is to be transmitted pursuant to Section 3101.

For background, a “special absentee voter” is defined in Elections Code section 300, as “an elector who is any of the following: (1) A member of the armed forces of the United States or any auxiliary branch thereof. (2) A citizen of the United States temporarily living outside of the territorial limits of the United States or the District of Columbia. (3) Serving on a merchant vessel documented under the laws of the United States. (4) A spouse or dependent of a member of the armed forces or any auxiliary branch thereof.”

Elections Code Section 3100:

Prior to amendment by Statutes 2003, chapter 347, Elections Code section 3100 provided:

When a special absentee voter applies for an absent voter’s ballot and the elections official determines that he or she is not registered to vote, the elections official shall send the affidavit of registration card with the ballot. The affidavit of registration must be completed by the voter and returned with the voted ballot or the ballot shall not be counted.

If the application has been made upon a federal form for absentee ballots the form shall be deemed an affidavit of registration and the applicant shall be considered registered for that election only. If the special absentee voter requests an absentee ballot for the ensuing primary election, the elections official shall also consider the request valid for the ensuing general election.

If the applicant is not a resident of the county to which he or she has applied, the elections official receiving the application shall forward it immediately to the proper county.

Elections Code section 3100, as amended, removes the second paragraph, but leaves the third paragraph unchanged. The first paragraph now reads:

When a voter who qualifies as a special absentee voter pursuant to subdivision (b) of Section 300 applies for an absent voter’s ballot, the application shall be deemed to be an affidavit of registration and an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200). The application must be completed by the voter and must contain the voter’s name, residence address for voting purposes, the address to which the ballot is to be sent, the voter’s political party for a primary election, and the voter’s signature.

Thus, there is no *new* type of absent voter established by Statutes 2003, chapter 347 – the law has long established a category of “special absentee voter.” The amended section allows an application for an absentee ballot to be considered both a permanent absentee ballot request and a registration to vote, eliminating the requirement to send a registration card with the absent voter’s ballot if the requestor was not properly registered. In addition, since the request for an absent voter’s ballot under this section is “deemed to be ... an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200)” any activities associated with new permanent absent voters are reimbursable under Elections Code section 3200 through 3206, as discussed above. Thus, the Commission finds that amendment to Elections Code

section 3100 by Statutes 2003, chapter 347, does not in and of itself mandate a new program or higher level of service.

Elections Code Section 3101:

Amendment by Statutes 2003, chapter 347 to Elections Code section 3101, is indicated by underline and strikethrough:

Upon timely receipt of the ~~affidavit of registration and the voted~~ application for an absentee ballot, the elections official shall examine the ~~affidavit~~ application to ascertain that it is properly executed in accordance with this code ~~and that the applicant is a qualified elector of the county~~. If the elections official is satisfied of ~~these~~ this facts, the applicant shall be deemed a duly registered voter as of the date appearing on the ~~affidavit~~ application to the same extent and with the same effect as though he or she had registered in proper time prior to the election.

These amendments reflect the fact that section 3100, as discussed above, no longer requires elections officials to send a registration card with the special absent voter's ballot if the requestor was not properly registered, but rather may consider the absent ballot request alone to be an executed voter registration. The Commission finds that the changes to Elections Code section 3101 by Statutes 2003, chapter 347 does not mandate a new program or higher level of service; in fact, it may reduce the burden on elections officials.

Elections Code Section 3103, Subdivision (f):

Amendment by Statutes 2003, chapter 347 to Elections Code section 3103, subdivision (f), is indicated by underline and strikethrough:

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official ~~shall~~ may send to the qualified special absentee voter either by mail, ~~or~~ or facsimile, ~~or~~ or electronic transmission the special absentee ballot or, if available, an absent~~'s~~ voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

The primary amendment by Statutes 2003, chapter 347 changes the word "shall" to "may" regarding available formats for transmitting the absent ballot. The Commission finds that such changes to Elections Code section 3103 by Statutes 2003, chapter 347 does not mandate a new program or higher level of service; but again may reduce the burden on elections officials.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$1000 or more for the test claim allegations. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the activities listed in the conclusion below, the Commission agrees and finds accordingly that they impose costs mandated by the state upon counties within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Elections Code sections 3201 and 3203, subdivision (b)(2) mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201.)³⁴

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2).)³⁵

The Commission concludes that Elections Code sections 3200, 3202, 3203, subdivisions (a) and (b)(1) and (b)(3), 3204, 3205, subdivision (a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists. Any references to former Elections Code sections 1450, 1452, 1454, 1455 and 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by their new numbers when the parameters and guidelines are amended as described above.

In addition, the Commission concludes that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.³⁶

³⁴ As amended by Statutes 2001, chapter 922, Statutes 2002, chapter 664, and Statutes 2003, chapter 347. The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

³⁵ As amended by Statutes 2001, chapter 922. The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

³⁶ Allegations regarding Elections Code sections 3104, 3106, 3108, and 3110 were not pled with specificity and thus were not addressed in this analysis.

Commission on State Mandates

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Issue: Permanent Absent Voters II

Mailing Information: Final Staff Analysis

Mailing List

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